

July 5, 1991

Mr. George W. Tenley, Jr.
Associate administrator for Pipeline Safety
Office of Pipeline Safety
U. S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

Dear Mr. Tenley:

Our agency has been investigating a natural gas incident which occurred in Tennessee resulting in one death and four injuries. During our investigation of the incident, we have found the natural gas distribution operator affected was notified of a leak on his system when a backhoe operator hit and broke a cast iron main. After being notified of the leak, the gas operator dispatched an emergency repair crew to the site. They secured the leak by closing off the emergency valves on the cast iron main in two areas.

The gas operator emergency crew foreman at the site was asked by the backhoe operator's company to lower the gas line where the main was broken because the line was in conflict with their proposed sewer line. The gas operator foreman agreed to lower the line and the construction company backhoe operator cleaned i=out the area next to the cast iron main, assisted the gas operator's emergency crew in removing the broken cast iron main, lowering the new fabricated plastic drop line and backfilling part of the line.

Since the backhoe operator was not an employee nor a construction contractor of the gas company, is he subject to drug testing? If the backhoe operator is subject to drug testing, does this apply to post accidents and who has the authority to request a test be performed on this individual if it appears his performance contributed to the incident?

We would appreciate a quick response to this matter and if additional information is needed, please let us know.

Sincerely,

Glynn Blanton, Director
Gas Pipeline Safety

September 3, 1991

Mr. Glynn Blanton
Director
Gas Pipeline Safety
Tennessee Public Service Commission
460 James Robertson Parkway
Nashville, TN 37243-0505

Dear Mr. Blanton:

This is in response to your letter of July 5, 1991, to George W. Tenley, Jr., Associate Administrator for Pipeline Safety, Research and Special Programs Administration, asking for guidance on which individuals would be subject to post-accident testing. Your letter outlines a recent accident in which the operator's emergency response crew enlisted the services of a backhoe operator to clear out of the operator, nor a construction contractor of the operator. An accident occurred while the backhoe operator assisted in the repairs, and several individuals were injured.

Under ? 199.11(b), an operator is required to conduct a post-accident drug test of an employee whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test, but such a decision must be based on the best information available, immediately after the accident. This information may indicate that the "employee's" performance could not have contributed to the accident or that, because of the time between the that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

Implementation guidelines for anti-drug program pipeline personnel published on April 20, 1990, includes a list of functions that make an employee subject to drug testing because the function is regulated under Parts 192, 193, or 195. The implementation guide includes the following function: "Operating a backhoe by the operator or contractor when performing operating, maintenance and emergency response functions on a pipeline."

Your correspondence appears to indicate that the backhoe operator was performing an emergency response function in assisting the operator to lower the gas line where the cast iron main was broken, because the line was in conflict with a proposed sewer line. Therefore, the backhoe operator is considered an employee of the operator or a contractor employee and subject to the post-accident testing provisions of Part 199, as well as pre-employment random testing. Also, the operator would then determine if the backhoe operator actions contributed to the accident and subject the individual to a post-accident test.

Thank you for your inquiry. Please let me know if you need any more information about our drug testing requirements.

Sincerely,

Richard L. Rippert
Drug Compliance Coordinator
Office of Pipeline Safety
Enforcement